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Approved For Release 2002/08/06 : CIA-RDP80-00679A000200020017-6

OGC Has Reviewed

16 July 1954

MEMORANDUM FOR: The Record

SUBJECT: Social Security re Employees Hired by Contract

1. In considering renewal of the procedures for employing part-time and "summer-only" personnel originally put into effect during the summer of 1951, the question of whether or not such employees should be subject to the provisions of the Social Security Act, as amended, have been reviewed. On the basis of the following opinions, it is concluded that those individuals, whose employment is based on a contract or employment agreement, should not be subject to the Social Security Act provisions.

2. In a memorandum for the Personnel Director on the subject of proposed Regulation [redacted] Employment of Consultants and Experts, dated 29 October 1953, [redacted], Office of General Counsel, indicated as follows:

"... Section 1426 of Title 26 of the U.S.C. defines the term "employment" for purposes of the Social Security Act as excluding services performed in the employ of the United States if such service is performed by an individual as an employee who is excluded by Executive Order from the operation of the Civil Service Retirement Act of 1930 because he is paid on a contract or fee basis. We are of the opinion that the words "contract or fee basis" are sufficiently broad to include all types of employment contract entered into by this Agency. This interpretation results in the conclusion that Social Security deductions should not be made for such individuals."

3. This same opinion is expressed by [redacted] Office of General Counsel, in paragraph 3 of a memorandum for the Record, on the subject of Social Security, dated 23 December 1953. This memorandum was prepared after Agency representatives had had a meeting with representatives of the Bureau of Old Age and Survivor's Insurance in Baltimore regarding the subject of Social Security.

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b. At a later date, [] this Office, covered this same subject in a conversation with [] Office of General Counsel. [] indicated orally that it was his opinion that employee hired by contract should not be subject to the provisions of the Social Security program. In his opinion it is mandatory that they be excluded from the program since they are not covered by the law. [] also expressed the opinion that our Personnel Services Contract (Form NS. 37-53A) is the legal document determining the contractor's relationship to the Government, irrespective of whether or not the Standard Form 50, or SF-52 in lieu thereof, is used in connection therewith for procedural purposes.

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